



HOUSE BILL 366: NC Farm Act of 2014

2013-2014 General Assembly

Committee:	House Agriculture, if favorable, Finance	Date:	July 28, 2014
Introduced by:	Reps. Langdon, Dixon, Brisson, S. Martin	Prepared by:	Chris Saunders
Analysis of:	Conference Report		Committee Counsel
	H366-PCCS40291-TQf-6		

SUMMARY: *The Proposed Conference Committee Substitute (PCCS) for House Bill 366 would amend various agricultural and environmental laws. The following changes were made between the Fifth Edition and the PCCS:*

- *Section 3.(b) – Concerning the North Carolina Landscape Contractors' Licensing Board provisions, provides an exemption from licensure for work where the price of all items for a given jobsite during any consecutive 12 month period is less than \$30,000. In the Fifth Edition, the exemption applied where the price of all items for a given jobsite during any consecutive 12 month period is less than \$25,000.*
- *Section 4 – Changes due date of the Department of Public Safety report on the Commercial Vehicle Safety Alliance North American Standard Inspection Program from November 1, 2014 to February 1, 2015.*
- *Section 6 – Maintains chairmanship of the House Agriculture and Senate Agriculture, Environment, and Natural Resources chairs on the Agriculture and Forestry Awareness Study Commission, but allows the President Pro Tempore of the Senate and Speaker of the House each to appoint an additional member to serve as cochair.*
- *Section 8 – New to the PCCS – expands the definition of "commercial horse feed" to include any commercial feed labeled or marketed for equine use for purpose of the Horse Industry Promotion Act checkoff program for the horse industry.*
- *Section 15 – New to the PCCS – Designates the "Got to be NC" campaign as the official agricultural marketing campaign for the State and adds "seafood" to the list of products to be promoted by the campaign.*
- *Section 16 – New to the PCCS – Allows the Pesticide Board to adopt rules to classify private pesticide applicators.*
- *Section 17 – New to the PCCS – Exempts the Board of Agriculture from rulemaking for the purpose of setting annual admission fees to the State Fair.*
- *Section 18 – Added a severability clause in addition to the effective date.*

[As introduced, this bill was identical to S387, as introduced by Sens. Barefoot, Cook, Walters]

BILL ANALYSIS:

Section 1 of the PCCS would provide that complaints to the Department of Environment and Natural Resources (DENR) concerning an agricultural operation, and all records accumulated in conjunction

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with the investigation of the complaint, are confidential and may be released by court order. If DENR, however, determines that a violation has occurred, the complaint and all records accumulated in conjunction with the investigation of the complaint will become public records. This section would also allow DENR to request additional information from a complainant and permit the Department to decline to accept or further investigate a complaint about an agricultural operation if an initial assessment of the complaint leads to a finding that the complaint is frivolous or was filed in bad faith. Section 1 would also direct DENR to adopt rules to develop a formal system for receiving, investigating, and responding to environmental complaints.

Section 2 would prohibit cities and counties from adopting ordinances regulating the use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, manufacture, or application of fertilizer. This section would not limit the authority of DENR or the Environmental Management Committee (EMC) to enforce water quality standards. Cities and counties would be permitted to adopt ordinances to regulate fertilizers to protect water quality, provided that the ordinances have been approved by the EMC or DENR as part of a local plan or National Pollutant Discharge Elimination System permit application and do not exceed the State's minimum requirements to protect water quality. This section would not prohibit a city or county from regulating explosive or inflammable substances by ordinance.

Sections 3.(a) and 3.(b) would rewrite the statutes regulating landscape contractors to require that any person engaged in the business of landscape contracting must obtain a license. This section would:

- create definitions for the terms "Board," "landscape construction or contracting," "landscape contractor," and "person";
- provide that unless otherwise permitted, no person shall engage in landscape construction or contracting, use the designation "landscape contractor," or advertise using a title that implies licensure unless the person is licensed as a landscape contractor;
- provide for exemptions for licensure, including:
 - a governmental agency performing landscaping on public property;
 - the North Carolina Department of Transportation;
 - a property owner performing landscape work on his or her own property;
 - a person or business owning or operating a golf course;
 - work where the price of all items for a given jobsite during any consecutive 12 month period is less than \$30,000;
 - licensed general contractors who possess a classification as a building contractor, residential contractor, or public utilities contractor;
 - licensed electricians and certain plumbing contractors;
 - professional engineers or professional landscape architects; or
 - individuals or businesses involved in several specific activities including clearing and grading plots and areas of land, erosion control, arboriculture, and others;
- establish the North Carolina Landscape Contractors' Licensing Board;
- set forth powers and duties of the Board, including the authority to administer and enforce this Chapter and the ability to issue and revoke licenses, among others;

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- establish requirements for landscape contractor licensure including application requirements, qualifications, and examination and continuing education. Applicants must meet certain qualifications before sitting for the examination (at least 18 years of age, good moral character, evidence of business ID, at least 3 years of experience in landscape construction or contracting or educational equivalent, and maintains corporate surety bond or letter of credit in the amount of \$10,000). The applicant must pass an examination administered by the Board;
- establish standards for issuing licenses to corporations, partnerships, and persons doing business under a trade name;
- authorize the Landscape Contractor Board to impose the following fees:

Application Fee	\$100
Exam Fee	\$250
Individual License Fee and Renewal Fee	\$100
Corporate License Fee and Renewal Fee	\$100
Late Renewal Fee	\$50
Reinstatement Fee	\$250
License by Reciprocity	\$250
Duplicate License	\$25

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- articulate causes for disciplinary action, civil penalties, and injunctions.

Section 3.(c) would provide that members currently serving on the North Carolina Landscape Contractors' Registration Board will continue to serve until the new Board is appointed.

Section 3.(d) would provide a procedure for future appointments. It would also provide that all records, staff, funds and other items of the North Carolina Landscape Contractors' Registration Board are transferred to the North Carolina Landscape Contractors' Licensing Board.

Section 3.(e) would provide that any person who meets at least one of the following criteria on or before December 31, 2014, shall be issued a license without needing to take an exam (if the person has submitted an application and paid the application fee on or before August 1, 2015):

- Is registered as a landscape contractor.
- Is licensed as an irrigation contractor.
- Is certified as a turf grass professional.
- Has 10 years experience in the person's own business as a landscape contractor or 10 years experience as an employee, meets all other requirements for licensure, and has one of the following:
 - One year of credit for a two-year degree in related educational training.
 - Two years of credit for a four-year-degree in related educational training.
 - Up to two years credit for education or business experience in general business management.

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This section also provides that landscape contractors currently registered under Chapter 89D are not required to renew the registration for the 2015 calendar year to qualify for the landscape contractor's license.

Sections 3.(a) through 3.(e) would become effective August 1, 2015.

Section 4 would direct The Department of Public Safety (DPS) to study North Carolina's participation in the Commercial Vehicle Safety Alliance North American Standard Inspection Program. This program allows commercial vehicles that pass a roadside safety inspection to receive a decal indicating that another inspection is not needed for a certain period of time. The PCCS would require DPS to report to the Agriculture and Forestry Awareness Study Commission by February 1, 2015.

Section 5 would define the "planting and harvesting season" and "planting and harvesting period" as January 1 through December 31 of each year, for purposes of the agricultural operations exemption to the federal motor carrier regulations on hours of service.

Section 6 would amend the chairmanship of the Commission to allow the President Pro Tempore of the Senate and the Speaker of the House of Representatives to appoint one additional member of the Senate and House, respectively, to serve as cochair. Currently, the chairs of the House Agriculture and Senate Agriculture, Environment, and Natural Resources Committees serve as ex-officio cochairs of the Agriculture and Forestry Awareness Study Commission (Commission).

Section 7 would authorize the Commissioner of Agriculture to appoint as many Department of Agriculture and Consumer Services (DACS) law-enforcement officers as he or she deems necessary to carry out the Department's law-enforcement responsibilities. These officers must meet the training standards of the North Carolina Criminal Justice Education and Training Standards Commission and take the constitutional oath of office. Certain officers could be designated to have the powers and duties of forest rangers and the power to enforce the forest laws. The officers would have the authority to arrest, without warrant, any person or persons committing any crime in their presence or whom they have probable cause to believe has committed a crime in their presence. These powers are currently granted to forest law-enforcement officers.

Session Law 2008-107 requires State agencies, including DACS, to receive approval from the Director of the Budget to establish a new receipt supported position. The Department's State Fair Police are receipt supported positions, so DACS would have to receive approval from the Director of the Budget before creating any more of these positions.

Section 8 would amend the definition of "commercial horse feed" under the Horse Industry Promotion Act to include any commercial feed labeled or marketed for equine use. Under current law, only commercial feed labeled for equine use is covered under the definition.

Section 9 would authorize the use of any pesticide registered by the Pesticide Board to control any species of mole other than the Star-Nosed mole if Pesticide Board rules are followed and hazards to nontarget species are minimized.

Section 10 would amend the statute for first degree trespass to provide that trespassing in an agricultural facility is a first degree trespass punishable as a Class A1 misdemeanor (the statute in question currently addresses trespass to locations such as electric generation facilities, water treatment facilities, and liquefied natural gas storage facilities). If the trespass is committed with the intent to disrupt the normal operation of the facility or if it places the offender or others at serious risk of bodily injury, the trespass is punishable as a Class H felony.

This section would become effective December 1, 2014, and would apply to offenses committed on or after that date.

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Section 11 would require a person, before operating a motorized all terrain vehicle on property not owned by the person, to obtain written consent from the owner of the property. A person given written consent under this section is owed the duty of care that a trespasser would be owed. Under current law, only verbal consent from the owner of the property is required.

This section would become effective December 1, 2014, and would apply to offenses committed on or after that date.

Section 12 would provide that no State statute or rule or local government ordinance concerning riparian buffers for the protection of water quality shall apply to the construction, operation, maintenance, or repair of canals, water retardant structures, or other improvements under the control and supervision of a board of drainage commissioners.

Section 13 would exempt any residential building subject to periodic inspections by the North Carolina Housing Finance Agency from a county or city's authority to conduct periodic inspections as part of a targeted effort within a geographic area, if the residential building is in compliance with federal standards and provided the owner of the residential building supplies the compliance results letters from the North Carolina Housing Financing Agency to the local inspections department.

Section 14 would require the Building Code Council to amend the NC State Building Code (Code) such that security grilles are permitted at all exits if the grilles may be opened from the inside during periods when the building is occupied by authorized persons and remain open when the building is occupied by the general public. Under current law, Section 1008.1.4.5 of the Code requires that no more than one-half of the doors of certain buildings be equipped with security grilles when two or more means of egress are required.

Section 15 would designate the "Got To Be NC" marketing campaign of the North Carolina Department of Agriculture and Consumer Services as the official agricultural marketing campaign for the State. This section would also add "seafood" to the list of products to be promoted by the campaign.

Section 16 would allow the Pesticide Board to adopt rules to classify private pesticide applicators.

Section 17 would exempt the Board of Agriculture (Board) from rulemaking requirements with respect to annual admission fees for the State Fair. The Board would be required to post the annual admission fee schedule on its website and provide notice to all persons who have requested notice of rulemaking.

Section 18 contains a severability clause and the effective date of this act.

EFFECTIVE DATE: Except as otherwise provided, this act would be effective when it becomes law.